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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Analytical assessment tool for national preventive mechanisms

I. Introduction

1. Pursuant to article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a State party is obliged to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In this framework States parties are obliged to ensure that education and information on the prohibition against torture is fully included in the training of all personnel who may be involved in depriving persons of their liberty.[1] The prohibition of torture should be included in the working regulations of such personnel, and all methods of and processes for taking the liberty and freedom of a person should be reviewed systematically.[2] The same principles apply to other acts of cruel, inhuman or degrading treatment or punishment.[3]

2. In the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment it is stressed that effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures. As one means of prevention, the Optional Protocol establishes a system of regular visits to all places of detention.

3. It is the responsibility of the State party to ensure that it has in place a national preventive mechanism that complies with the requirements of the Optional Protocol (see CAT/OP/12/5, para. 2). Preventive work should be carried out by that mechanism, with its main task to visit places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.[4] The State party shall guarantee the organizational and functional independence of the mechanism and provide it with the resources necessary to enable it to carry out its functions in accordance with the requirements of the Optional Protocol. It shall, however, refrain from supervising the mechanism.

[1] Article 10 (1) of the Convention.
[2] Articles 10 (2) and 11 of the Convention.
[3] Article 16 (1) of the Convention.
[4] Article 1 of the Optional Protocol.

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4. A national preventive mechanism should have the capacity to operate in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).[5]

5. The development of national preventive mechanisms should be considered an ongoing obligation, with formal aspects reinforced and working methods refined and improved incrementally (see CAT/C/40/2 and Corr.1, para. 28 (n)). Once such a mechanism is established, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment shall maintain direct and, if necessary, confidential contact with the mechanism and offer it training and technical assistance with a view to strengthening its capacities. Upon request from a State party and/or a national preventive mechanism, the Subcommittee will offer further advice and assistance to the mechanism in the evaluation of its needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and ill-treatment. In order to fulfil this advisory function usefully, the Subcommittee must have formed a view about the manner in which the mechanism is addressing core areas of its mandate. For this purpose the Subcommittee has prepared guidelines on national preventive mechanisms (CAT/OP/12/5).

6. In order to facilitate self-evaluation of mandated activities, the Subcommittee has prepared the present document, which reflects the principles set out in previously issued documents and guidelines and the prevailing thinking in the field. The Subcommittee urges existing national preventive mechanisms and States parties to carry out self-evaluations systematically and periodically and improve their activities to bring them into line with the guidance compiled in the present tool. In addition, national preventive mechanisms that have been designated but are not yet operational, as well as States parties in the process of ratifying the Optional Protocol and creating such mechanisms, are encouraged to use the present tool and the matrix based thereon for guidance.

II. Mandate of the national preventive mechanism

7. The effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures, as stated in the preamble of the Optional Protocol.

8. The major function of a national preventive mechanism in discharging its preventive role is to carry out visits, which may be unannounced, to places of detention.[6] The purpose of such visits is to regularly examine the treatment of persons deprived of their liberty in places of detention with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.[7]

9. In addition to conducting visits, the mandate of a national preventive mechanism should include the following activities:

(a) Making recommendations to the relevant authorities, with the aim of improving the treatment and conditions of persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment of those persons,[8] and engaging in a meaningful process of dialogue with the State party responsible and any

[5] Article 18 (4) of the Optional Protocol.
[6] Articles 1 and 19 (a) of the Optional Protocol.
[7] Article 19 of the Optional Protocol.
[8] Article 19 (b) of the Optional Protocol.

other relevant stakeholders concerning the implementation of any recommendations made (see CAT/OP/12/5, para. 38);

(b) Publicizing its opinions, findings and other relevant information in order to increase public awareness, especially through education and by making use of a broad range of media;[9]

(c) Submitting proposals and observations concerning existing or draft legislation[10] and relevant human rights action plans, and submitting to the Government, the parliament and any other competent body on an advisory basis, either at the request of the authorities concerned or through the exercise of the mechanism's powers under the Optional Protocol, opinions, recommendations, proposals and reports on any matters concerning the situation of detainees and any other issues within the mandate of the mechanism;[11]

(d) Performing systematic reviews of interrogation rules, instructions, methods and practices and of arrangements for the detention and treatment of persons subjected to any form of detention in any territory under a State party's jurisdiction, with a view to preventing any cases of torture;[12]

(e) Examining rules or instructions issued in regard to the duties and functions of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of detention in order to verify conformity with the Convention, the Optional Protocol and other human rights instruments;[13]

(f) Assisting in the formulation of programmes for the teaching of the prohibition and prevention of torture and other cruel, inhuman or degrading treatment or punishment and carrying out research into human rights and, where appropriate, taking part in the execution of such programmes and research in schools, universities and professional circles;[14]

(g) Examining the curricula of education institutions to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of detention;[15]

(h) Either contributing to the reports that States parties are required to submit to United Nations bodies and committees and to regional institutions, pursuant to their treaty obligations, or presenting its own reports and, where necessary, expressing an opinion on the subject, in accordance with its independent status;[16]

(i) Following up on the process of implementation of recommendations made by United Nations and regional bodies to the States parties with regard to torture and related issues, providing advice at the national level and providing the recommending bodies with information, as appropriate;

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[9] Paris Principles.
[10] Article 19 (c) of the Optional Protocol; see also CAT/OP/12/5, para. 35.
[11] Paris Principles.
[12] Article 11 of the Convention against Torture.
[13] Article 10 (2) of the Convention against Torture.
[14] Paris Principles.
[15] Article 10 (1) of the Convention against Torture.
[16] Paris Principles.

(j) Considering establishing and maintaining contacts with other national preventive mechanisms with a view to sharing experiences and reinforcing effectiveness (see CAT/OP/12/5, para. 6);

(k) Establishing and maintaining contact with the Subcommittee by regularly exchanging information and meeting with it.[17]

III. Organization of the national preventive mechanism

10. The national preventive mechanism is to be given a preventive mandate and powers in accordance with the Optional Protocol, which is to be clearly set forth in a new or existing constitutional or legislative text specifying the composition of the mechanism and its sphere of competence.[18] Such legislation should extend the visiting mandate to all places where people are or may be deprived of their liberty, as set out in article 4 of the Optional Protocol (see CAT/OP/12/5, para. 10).

11. The relevant legislation should specify the period of office, whether determined or open-ended, of the members of the national preventive mechanism and any grounds for their dismissal (ibid., para. 9). In addition, the legal basis should guarantee that the members of the national preventive mechanism and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions, and should address the issue of reprisals and other such actions against members of the mechanism, their partners and any person who has communicated with the mechanism.[19]

12. The legislative text should grant the national preventive mechanism at minimum:[20]

(a) The power to freely select the places of deprivation of liberty in which visits are to be carried out; to regularly examine the treatment of persons deprived of their liberty in those places; to select the timing of such visits and determine whether they are to be announced or unannounced; and to choose the persons to be interviewed;

(b) Access to all information, including personal and sensitive information, premises and persons necessary for pursuing its mandate;

(c) The power to make recommendations to the relevant authorities;

(d) The power to submit proposals and observations concerning existing or draft legislation;

(e) The right to have contact with the Subcommittee.

13. Bearing in mind the requirements of article 18 (1) and (2) of the Optional Protocol, members of the national preventive mechanism should be selected through an open, transparent and inclusive process and collectively have the expertise and experience necessary for the effective functioning of the mechanism. The selection process should preferably be prescribed in the governing national preventive mechanism legislation. The mechanism should ensure that its team has the diversity of background, for example in respect to gender balance and representation of minorities, capabilities and professional knowledge, necessary to enable it to properly fulfil its mandate (see CAT/OP/12/5, paras. 17 and 20). In its activities the mechanism should also take benefit from cooperation with civil society, universities and qualified experts, Parliament and government departments,

[17] Article 20 (f) of the Optional Protocol.

[18] Paris Principles and CAT/OP/12/5, para. 7.

[19] See article 21 (1) of the Optional Protocol and CAT/OP/12/5, paras. 26-27.

[20] Articles 19 and 20 of the Optional Protocol.

among others.[21] Special attention should be paid to developing relations with civil society members dedicated to working with vulnerable groups.[22]

14. Where an organization designated as the national preventive mechanism performs other functions in addition to those under the Optional Protocol, the national preventive mechanism functions should be located within a separate unit or department with its own staff and a separate budget (see CAT/OP/12/15, para. 32). The relationship between the national preventive mechanism function and the rest of the organization, the working methods and the safeguards applicable to preserve the independence of that function should be clearly set out in the relevant internal regulations.

15. States parties should make available the resources necessary for the effective functioning of national preventive mechanisms.[23] A national preventive mechanism should prioritize its own use of resources on the basis of a regular analysis of its practice and experience and in the light of its evaluation of its needs and the means necessary for it to exercise its mandate appropriately. The mechanism should advocate for the provision of the resources necessary for the effective exercise of its mandate, with the assistance of the Subcommittee and/or other relevant actors if necessary.

16. To ensure coherent and transparent functioning, national preventive mechanisms should develop policies and rules of procedure for, inter alia:

(a) Organization of the office, its work and budgets for all activities described in paragraph 9 of the present tool;

(b) Procedures for decision-making;

(c) Employment and dismissal of staff;

(d) Prevention of conflicts of interest;

(e) Employment of external experts, establishing necessary qualifications and terms of reference for their work;

(f) Sharing of information within the mechanism;

(g) Communication with other national and international actors, including the Subcommittee, and the press;

(h) Data protection and issues of confidentiality.

IV. Working strategy of the national preventive mechanism

17. Given the nature of its work, it is almost inevitable that a national preventive mechanism will face challenges such as a reluctance within bureaucracies to change structures and practices, a lack of resources to implement recommendations and other initiatives, and, occasionally, negative public opinion. Some of those challenges will be outside the control of the mechanism and, to some extent, the relevant authorities with whom the mechanism engages. In such situations the mechanism should nevertheless try to find and put forward creative solutions that might address an issue over time in an incremental fashion. It should consider forming partnerships with national and international actors in order to raise awareness of the obligations of the States parties among decision makers and the general public in order to encourage and facilitate change in legislation,

[21] Paris Principles.
[22] Ibid.
[23] Article 18 (3) of the Optional Protocol.

policies made by authorities, general attitudes, and conditions and practices in places of detention.

18. The national preventive mechanism should develop concrete long- and short-term strategies in order to achieve the maximum impact on problems and challenges relevant to its mandate in the local context. Activities and their outcomes should be monitored and assessed on an ongoing basis and the lessons learned should be used to develop the practices of the mechanism. Such an assessment could be based on a framework, starting with existing challenges, such as resourcing issues, and an assessment of activities currently being undertaken, moving through a range of additional factors and activities, such as:

(a) Criteria for the selection of planned activities;

(b) Criteria for the composition of working groups and visiting and outreach teams, among others, including the involvement of specific forms of professional expertise or other input from national/international stakeholders;

(c) Analysis of problems and challenges, and of good practices that have been identified;

(d) Cooperation with other actors;

(e) Resources budgeted;

(f) Strategies and working methods to be adopted when implementing activities;

(g) Recommendations submitted to authorities;

(h) Follow-up action and an assessment of the implementation of recommendations, including dialogue with authorities;

(i) Systematization of observations, recommendations issued and the responses received from authorities, including information on implementation, as well as analysis of how and why successes and failures in effective change have occurred;

(j) A description of all other national preventive mechanism activities in addition to visiting, output and impact assessments;

(k) Resources spent;

(l) Consideration of the need to develop alternative strategies or approaches.

19. Working strategies are subject to periodic evaluation and improvement. A national preventive mechanism might wish to include its partners in reviewing and taking stock of its activities. It may also wish to seek input from international stakeholders, such as the Subcommittee.

20. The work of the mechanism should be understood as an ongoing, context-based process of development that takes into account not only the experience of the mechanism itself but also information and advice from and the experience of other relevant and reliable sources. Members, staff, external experts and other potential contributors should receive ongoing training on mechanism activities and torture prevention, including on methodological, strategic and ethical issues, and should participate in the development of working methods. The involvement of the Subcommittee in such capacity-building activities could be beneficial.

V. Implementation of visiting activities

A. Planning

21. In the framework of its visiting activities the national preventive mechanism should actively seek information in order to ensure that it has data and background information for all places of detention and should keep an archive of all relevant information about places of detention and the treatment of persons held there.

22. The mechanism should ensure that it has criteria for selecting the places to be visited and for deciding on thematic visits that ensure that all places of detention are visited regularly, taking into account the type and size of institutions, their security level and the nature of known human rights problems, while leaving room for flexibility in the allocation of resources to ensure that follow-up and urgent visits can be undertaken. Such criteria should be transparent, clear and published.

23. The composition of a visiting team should take into account the necessary knowledge, including with respect to languages, groups with special needs and vulnerable groups, the experience and skills of members, gender balance and the adequate representation of ethnic and minority groups. The team should have sufficient human and technical resources and time to enable it to properly carry out its tasks.

B. Visit methodology

24. On an ongoing basis, a national preventive mechanism should develop guidelines for visits to the various categories of places of detention, including instructions for selecting the theme of a visit, for conducting private interviews, for developing policies for dealing with vulnerable groups of detainees and for ensuring that information from all available sources, such as the administration and staff of the institution visited, detainees from all areas and units, other visitors, if appropriate, and outside actors, such as civil society and other monitoring mechanisms, is collected.

25. All facilities within institutions should be visited and existing registries, examples of case records and activities and services for the detainees should be assessed, unless the visit is thematic only. If a visit is thematic, its coverage of the facilities can be only partial.

26. Practices and tools should be developed to cross-check, test and assess observations and to ensure that recommendations are based on rigorous analysis and are factually well grounded (see CAT/OP/12/6, para. 5 (f)). The national preventive mechanism should put in place an effective data management system.

27. There should be a policy that provides for an immediate debriefing with the representatives of the place of detention at the end of a visit.

28. The mechanism should consider developing a code of conduct for visiting teams, covering, among other things, addressing detainees and staff, observing cultural and any other relevant sensitivities, conducting individual or group interviews, including how and when to conduct such interviews, handling security and safety issues, ensuring confidentiality, managing internal debriefings in order to coordinate and cross-check data collected and prepare for the closing of the visit, ensuring that the visitors do not step outside or in any other way exceed the mandate of the mechanism during a visit, and participating in reporting and follow-up.

29. The national preventive mechanism should have clear guidelines for reporting individual cases of deliberate ill-treatment and requesting inquiries, as well as for

maintaining the confidentiality of the detainee concerned and any other source of relevant information and protecting such persons against reprisals.

C. Visit reports

30. Visit reports should focus on the most important issues, that is, the reporting of ill-treatment, gaps in policies, regulations and practices, and the appropriateness of conditions under which detainees are living, and should reflect any systematic lack of protection of the rights of detainees. Good practices should be noted and filed for systematic analysis. Cases of deliberate ill-treatment should be examined to identify gaps in the protection of persons deprived of their liberty.

31. Recommendations should be well founded and should reflect, among other things, relevant international norms and practices. In general, recommendations should have a preventive focus, addressing systematic gaps and practices (root causes), and be feasible in practice. They should be relevantly focused, precise and non-complex, so as to avoid confusion in the dialogue about their implementation.

32. The national preventive mechanism should, based on its experience, develop a strategy for the use of its report, which should include the submission of the report to relevant official bodies and the Government as a basis for and dialogue, and possibly its publication and dissemination, for the purpose of alerting the wider society.

D. Follow-up to recommendations for change issued by the Subcommittee and by the national preventive mechanism

33. The national preventive mechanism should regularly verify the implementation of recommendations, primarily through follow-up visits to problematic institutions, but also based on relevant information from, among others, human rights bodies, governmental institutions and civil society. In order to facilitate effective follow-up, the mechanism should put in place a follow-up strategy that is clear and impact-oriented and develop the practices and tools necessary to implement the strategy.

34. The mechanism should maintain a constructive dialogue with, firstly, those to whom the recommendations are addressed, namely, governmental authorities and the directors/managers of the places of detention concerned, but also with their supervising authorities. The dialogue should involve both written and oral exchanges on the implementation of the recommendations. Those to whom the recommendations are addressed should, on request from the mechanism, develop a concrete policy or plan of action to commence reform where needed. In particular cases it may be appropriate to recommend that authorities immediately put an end to certain practices and initiate a criminal investigation.

35. Visit reports, including recommendations, should, in principle, be published. Exceptions may exist where the national preventive mechanism considers it inappropriate to do so or where there is a legal impediment. Annual reports must be published and should include, in addition to recommendations for change, the outcome of the dialogue with authorities, i.e., follow-up on recommendations mentioned in previous annual reports. The mechanism may also publish thematic reports.

36. The national preventive mechanism should maintain a dialogue with other relevant national and international actors, including civil society, consider all relevant information received from them and advocate for submission of relevant information to the mechanism.

E. Prevention of reprisals

37. The national preventive mechanism should develop a strategy for preventing reprisals and threats by detention centre staff, as well as by fellow detainees, against persons interviewed during visits and others who may provide sensitive or critical information before or after a visit. Such a strategy should also address threats of reprisal against members and staff of the mechanism. The strategy could include the following guidance:

(a) The national preventive mechanism should establish a policy setting out the types of information that can be collected during group interviews and the types of information that should be collected in private interviews only. Whenever sensitive or critical information is obtained during a private interview a number of additional private interviews should be conducted to preserve the anonymity of the source of the information;

(b) The national preventive mechanism should, during talks with management, staff and detainees in places of detention, stress that reprisals are explicitly prohibited in the Optional Protocol, that follow-up will focus on that issue and that detainees subject to reprisals should notify the mechanism. It is advisable to widely distribute to managers, staff and detainees folders containing information about the mandate and working methods of the national preventive mechanism, including references to the absolute prohibition of reprisals, and the address and contact information of the mechanism. National preventive mechanisms should ensure that they are expressly permitted, either in law or in practice, to distribute any material about the mechanism to detainees and that detainees may receive and keep such material;

(c) Cases of particular concern should be followed up and monitored, including after the transfer of the detainees concerned to other institutions; increased attention should be paid to places where reprisals have or are likely to have occurred, and the monitoring of those places should be enhanced;

(d) Intervention by and assistance from other actors, including non-governmental organizations, may be sought and facilitated; it is essential to ensure that national preventive mechanisms share relevant information with international monitoring bodies about possible cases of reprisal;

(e) Relevant information from other actors, including non-governmental organizations working directly or indirectly with detainees, that gives rise to concerns regarding the possibility of reprisals, should be acted upon immediately;

(f) Any well-founded concern about reprisals should be analysed, verified to the extent possible and filed. It should be considered for inclusion in the reporting of the national preventive mechanism and should give rise to a recommendation for the improvement of institutional practices with a view to protecting and compensating the victims and preventing reoccurrences;

(g) With the consent of the detainees concerned, cases of particular individuals at risk of reprisal may be brought to the attention of the authorities and followed up;

(h) In cases of alleged reprisal, the national preventive mechanism should seek to ensure that a disciplinary or criminal investigation is initiated and that victims are protected and, when relevant, compensated.

VI. Issues related to the legislative framework

38. The national preventive mechanism should ensure that the relevant legislative framework encompasses an absolute prohibition of torture and a definition of torture in accordance with the provisions in article 1 of the Convention against Torture, and that the penalties for infractions are commensurate with the gravity of the offence. The term "place of detention" should be defined in national law, bearing in mind the principles set out in the Optional Protocol and the protection of human rights.

39. The mechanism should consider monitoring and analysing systematically the implementation of proceedings against suspected perpetrators of torture and ill-treatment and advocate for, or facilitate the establishment of, a national register of allegations of torture, any investigation or criminal proceedings undertaken and the outcome thereof. Likewise, the mechanism should advocate for the establishment of an independent body with the capacity to assess allegations of torture and ill-treatment in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

40. The national preventive mechanism must be mandated to assess draft and existing legislation against the State party's international obligations and against other international standards. Therefore, it should propose and advocate for necessary legislative changes and advocate for their implementation with parliamentarians and Government, among others, in conjunction with other relevant actors when appropriate. Such changes should include amendments to the legislation if it is not compliant with the Convention against Torture, the Optional Protocol and the Paris Principles. The mechanism should develop a system to ensure that it is alerted to relevant legislation and draft laws.

41. Legislation should clearly state the obligation of competent authorities to examine the recommendations of the national preventive mechanism and to enter into a dialogue with it regarding the implementation of its recommendations.

VII. Cross-cutting issues

A. Cooperation and communication

42. The national preventive mechanism should establish: (a) a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations, including through urgent action procedures; (b) a means for addressing and resolving any operational difficulties encountered during the exercise of its duties, including during visits; (c) a policy on publicizing reports or parts of reports, including the main findings and recommendations; and (d) a policy regarding the production and publication of thematic reports.

43. The national preventive mechanism should establish a strategy for cooperation with other national and international actors, including the Subcommittee, on the prevention of torture and on the follow-up of cases of suspected or documented torture or ill-treatment and of possible reprisals. A wide range of national actors, such representatives of non-governmental organizations, trade unions, concerned social and professional organizations, trends in philosophical or religious thought, universities and qualified experts, Parliament and government departments, could be included.[24] Special attention should be paid to

[24] Paris Principles.

developing relations with civil society members devoted to dealing with vulnerable groups.[25]

44. The mechanism should establish a strategy for making its mandate and work known to the general public and a simple, accessible and confidential procedure through which the general public might provide it with relevant information.

B. Systematization of experiences

45. The national preventive mechanism should ensure that important concrete and contextual observations arising from its visits to institutions and stemming from other reliable sources, its recommendations and the responses from the authorities are categorized, filed and systematically processed for use in dialogue with the authorities, in the ongoing planning of work and in the further development of its strategies.

C. Prioritizing resources

46. While the national preventive mechanism should prioritize the most problematic issues and institutions, it should not exclude from the scope of its work any particular form of institution or geographical area or any national preventive mechanism task other than visiting.

D. Annual report

47. The annual report of the national preventive mechanism should include:

(a) Accounts of current challenges to the protection of the rights of persons deprived of their liberty and to the effective execution of the mechanism's mandate, and strategic short-term and longer term plans, including with respect to setting priorities;

(b) Analysis of the most important findings and an account of recommendations and the responses of the authorities thereto;

(c) Follow-up on issues outstanding from previously published reports;

(d) Consideration of thematic issues;

(e) Accounts of cooperation with other actors on the prevention of torture;

(f) An overview of all other national preventive mechanism activities undertaken and their outcomes.

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[25] Ibid.